

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID JON MARTIN (TRUST),  
Plaintiff,  
  
v.  
  
VA REGIONAL SAN DIEGO  
BENEFIT OFFICE, *et al.*,  
Defendants.

Case No. 15-cv-290-BAS(DHB)

**ORDER DISMISSING  
COMPLAINT WITHOUT  
PREJUDICE FOR FAILING TO  
STATE A CLAIM UPON WHICH  
RELIEF CAN BE GRANTED  
PURSUANT TO 28 U.S.C. §  
1915(e)(2)(B)(ii)**

Plaintiff David Jon Martin (Trust), a non-prisoner proceeding *pro se*, filed a complaint for “immediate payment and . . . damages . . . for years of hardship, Breach of Covenant, and civil right [sic] violations, by Veteran Affairs its agencies, agents and contractors.” Plaintiff also concurrently filed a motion for leave to proceed *in forma pauperis* (“IFP”) and a motion for preliminary injunction. (ECF Nos. 2, 3.) The former motion was granted, and the latter denied. (ECF No. 4.)

**I. *SUA SPONTE* SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)**

Notwithstanding payment of any filing fee or portion thereof, a complaint filed by any person proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) is subject to a mandatory and *sua sponte* review and dismissal by the court to the extent it is

1 “frivolous, malicious, failing to state a claim upon which relief may be granted, or  
 2 seeking monetary relief from a defendant immune from such relief.” 28 U.S.C. §  
 3 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions  
 4 of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d  
 5 1122, 1126-27 (9th Cir. 2000) (en banc).

6 Prior to its amendment by the Prison Litigation Reform Act, the former 28  
 7 U.S.C. § 1915(d) permitted *sua sponte* dismissal of only frivolous and malicious  
 8 claims. *Lopez*, 203 F.3d at 1130. Section 1915(e)(2), however, mandates that the court  
 9 reviewing a complaint filed pursuant to the IFP provisions of § 1915 make and rule on  
 10 its own motion to dismiss before directing that the complaint be served by the U.S.  
 11 Marshal pursuant to Federal Rule of Civil Procedure 4(c)(3). *Lopez*, 203 F.3d 1127  
 12 (“[S]ection 1915(e) not only permits, but requires a district court to dismiss an in forma  
 13 pauperis complaint that fails to state a claim.”); *see also Barren v. Harrington*, 152  
 14 F.3d 1193, 1194 (9th Cir. 1998) (noting the “the language of § 1915(e)(2)(B)(ii)  
 15 parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). As currently  
 16 pleaded, it appears as though Plaintiff’s complaint is subject to *sua sponte* dismissal  
 17 under 28 U.S.C. § 1915(e)(2)(B)(ii) because it fails to state a claim upon which relief  
 18 may be granted.

19 In a two-page handwritten complaint, Plaintiff alleges that he “has made past  
 20 claims for pension and service-connection, but all have been denied by Veteran  
 21 Affairs” despite the existence of a contract that is ““more than an employment  
 22 agreement,’ impl[ying] a higher contract, one of sacrifice, or ‘shedding of blood’ found  
 23 in ‘law of nations[.]’” (Compl. 1.) He ends his complaint requesting “immediate  
 24 payment and that damages be assessed for years of hardship, Breach of Covenant, and  
 25 civil right [sic] violations, by Veteran Affairs[,] its agencies, agents and contractors.”  
 26 (*Id.* at 2.)

27 To the extent that a liberal construction of Plaintiff’s complaint indicates that he  
 28 seeks to recover damages for civil-rights violations under 42 U.S.C. § 1983, Plaintiff

1 fails to allege facts to sustain a cognizable claim. Section 1983 “is not itself a source  
2 of substantive rights, but merely provides a method for vindicating federal rights  
3 elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal  
4 citations omitted); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). It imposes  
5 two essential pleading requirements upon a claimant: (1) that a person acting under  
6 color of state law committed the conduct at issue, and (2) that the conduct deprived the  
7 claimant of some right, privilege, or immunity protected by the Constitution or laws of  
8 the United States. 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981),  
9 *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *see*  
10 *Haygood v. Younger*, 769 F.2d 150, 1354 (9th Cir. 1985) (en banc).

11 Plaintiff fails to allege any facts from which this Court could even liberally  
12 construe a claim for violation of Plaintiff’s constitutional rights. In fact, no specific  
13 constitutional right is even mentioned anywhere in the complaint or its accompanying  
14 document.

15 Similarly, Plaintiff fails to allege any facts from which this Court could liberally  
16 construe a claim for breach of covenant, which this Court interprets to mean a claim  
17 for breach of the covenant of good faith and fair dealing. Every contract contains an  
18 implied-in-law covenant of good faith and fair dealing. *Foley v. Interactive Data*  
19 *Corp.*, 47 Cal. 3d 654, 683-84 (1988). “[T]he burden imposed is that neither party will  
20 do anything which will injure the right of the other to receive the benefits of the  
21 agreement. Or, to put it another way, the implied covenant imposes upon each party  
22 the obligation to do everything that the contract presupposes they will do to accomplish  
23 its purpose.” *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222 Cal. App. 3d 1371, 1393  
24 (1990) (internal quotation marks and citations omitted). “The precise nature and extent  
25 of the duty imposed by such an implied promise will depend on the contractual  
26 purposes.” *Egan v. Mut. of Omaha Ins. Co.*, 24 Cal. 3d 809, 818 (1979). There are  
27 simply no facts provided that present a plausible claim for a breach of the covenant of  
28 good faith and fair dealing.

1 From the Court's independent research, it was unable to identify any claim that  
2 could be liberally construed for "years of hardship."

3 While the Court must construe his *pro se* pleadings liberally, it may not "supply  
4 elements of [a] claim that were not initially pled." *Ivey v. Bd. of Regents*, 673 F.2d 266,  
5 278 (9th Cir. 1982). Here, even upon liberally construing his complaint, Plaintiff fails  
6 to provide the necessary facts to sustain a plausible claim for a civil-rights claim or a  
7 claim for the breach of the covenant of good faith and fair dealing.


## 8 9 **II. CONCLUSION & ORDER**

10 In light of the foregoing, the Court **DISMISSES WITHOUT PREJUDICE**  
11 Plaintiff's complaint for failing to state a claim upon which relief can be granted  
12 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). If Plaintiff still wishes to continue to  
13 proceed with this matter, he must **SUBMIT AN AMENDED COMPLAINT WHICH**  
14 **ADDRESSES ALL THE DEFICIENCIES OF PLEADING SET FORTH ABOVE** no  
15 later than April 27, 2015. If Plaintiff's amended complaint still fails to state a claim  
16 upon which relief can be granted, it will be dismissed with prejudice and without any  
17 further leave to amend. *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996)  
18 (holding that court may dismiss action pursuant to Federal Rule of Civil Procedure  
19 41(b) if Plaintiff fails to comply with previous court order regarding amendment).

20 The Court also **DENIES WITHOUT PREJUDICE** Plaintiff's motion for an  
21 order directing the U.S. Marshals Service to serve the summons and complaint on the  
22 defendants because the motion is premature at this time.

23 **IT IS SO ORDERED.**

24  
25 **DATED: March 26, 2015**

26   
27 **Hon. Cynthia Bashant**  
28 **United States District Judge**